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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 UNITED STATES OF AMERICA,
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14 v. Plaintiff,
15 MIGUEL CASTILLO,
16 Defendant.

CIVIL CASE NO. 08CV1044
CRIM CASE NO. 00CR1502

**ORDER SETTING BRIEFING
SCHEDULE**

17 HAYES, Judge:

18 This matter comes before the court on Defendant's "Motion to Dismiss under the Non-
19 Violent Offender Act of 2003 §2255" (Doc. # 51). Defendant moves the court for an order of
20 release on the grounds that he has served his term of imprisonment. Defendant contends that
21 he is entitled to early release under 18 U.S.C. § 3624 pursuant to a good time policy.

22 28 U.S.C. §2255 provides that "A prisoner under sentence of a court established by Act
23 of Congress claiming the right to be released upon the ground that the sentence was imposed
24 in violation of the Constitution or laws of the United States, or that the court was without
25 jurisdiction to impose such sentence, or that the sentence was in excess of the maximum
26 authorized by law, or is otherwise subject to collateral attack, may move the court which
27 imposed the sentence to vacate, set aside or correct the sentence." A petition under § 2255 can
28 test only the propriety of the sentence imposed, not the manner of execution. *United States v.*

1 *Gidding*, 740 F.2d 770, 772 (9th Cir. 1984). “Review of the execution of a sentence may be
2 had through petition for a writ of habeas corpus under 28 U.S.C. § 2241.” *Id.* This court has
3 jurisdiction to treat the “Motion to Dismiss” under § 2255 as a writ of habeas corpus under 28
4 U.S.C. § 2241 because the Defendant is confined at the “San Diego Metropolitan Correction
5 Center.” (Doc. # 51, Page 2).

6 IT IS HEREBY ORDERED that:

7 (1) the Clerk of the Court shall serve notice of this Motion and this Order upon the
8 Plaintiff United States of America forthwith;

9 (2) Plaintiff United States of America shall file a written response to the Defendant’s
10 Motion to Dismiss including any copies of all pertinent documents relevant to this motion, no
11 later than June 30, 2008, and serve a copy upon the Defendant;

12 (3) Any Reply by the Defendant to the Plaintiff’s Response shall be filed no later than
13 July 15, 2008.

14 The court will thereafter issue a ruling.

15 DATED: June 17, 2008

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17 **WILLIAM Q. HAYES**
18 United States District Judge
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